IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 150 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-
and
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

COMMISSIONER OF INCOME TAX

Versus

KAIRA DIST.CO.OP.MILK PRODUCERS;

Appearance:

1. INCOME TAX REFERENCE No. 150 of 1991

MR MANISH R BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 04/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA)

1. By way of this Reference at the instance of the Commissioner of Income-tax, Gujarat-II, the following question arising out of M.A. No.9 (Ahd)/1990 in I.T.A. No. 2331/Ahd/86 for A.Y. 1981-82, is referred for opinion:-

"Whether, the Appellate Tribunal is right in law and on facts in directing the ITO to allow 10% of the claim of the assessee relating to weighted deduction under section 35-C of the I.T. Act ?"

2. The learned standing counsel, Mr.M.R.Bhatt, for the applicant, fairly conceded that the issue is squarely covered by the earlier judgment of this Court in the matter of the same assessee, which judgment is reported in 253 ITR page 766 and to which one of us (D.A. Mehta, J.) was a party.

3. In light of the ratio laid down in the aforesaid decision of this Court, the question referred to us at the instance of the Revenue stands concluded against the Revenue. The question referred to us is, therefore, answered in the negative, i.e. in favour of the Assessee and against the Revenue. The Reference stands disposed of accordingly. There will be no order as to costs.

Sd/-

(D.H.Waghela,J.)

Sd/-

(D.A. Mehta, J.)

(KMG Thilake)